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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9
10 JOHN HAROLD McCULLOUGH,
11 Plaintiff,
12 v.
13 RICHARD MACHADO, *et al*,
14 Defendants.

Case No. 3:16-cv-00225-MMD-VPC

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE
VALERIE P. COOKE

15 **I. SUMMARY**

16 Before the Court is the Report and Recommendation of United States Magistrate
17 Judge Valerie P. Cooke (ECF No. 25) (“R&R” or “Recommendation”) recommending the
18 Court grant plaintiff’s motion to amend (ECF No 30) and dismiss Count VIII. Plaintiff
19 timely filed an objection to the R&R (“Objection”) (ECF No. 36) to which Defendants
20 have responded (ECF No. 40). Plaintiff then filed a reply without leave of court in
21 violation of LR IB 3-2. (ECR No. 40.) Accordingly, the Court will strike Plaintiff’s reply
22 (ECF No. 41).

23 **II. RELEVANT BACKGROUND**

24 Plaintiff, who is a prisoner in the custody of the Nevada Department of
25 Corrections (“NDOC”), submitted an amended civil rights complaint pursuant to 42
26 U.S.C. § 1983. (ECF No. 5.) After screening pursuant to 28 U.S.C. § 1915A, on
27 December 2, 2016, the Court construed the five counts asserted as a claim for deliberate
28 indifference to serious medical needs in violation of the Eighth Amendment. (ECF No. 4

1 at 7-8.) On May 31, 2017, Plaintiff filed a motion for leave to file a second amended
2 complaint ("SAC"). (ECF No. 30.) Defendants conceded that Counts I through V are
3 similar to the counts that survived screening, indicated they would await screening of
4 Counts VI and VII, and argued that Count VIII is barred based on immunity. (ECF No.
5 32.) The Magistrate Judge recommends granting Plaintiff's motion to file a SAC but
6 allowed Plaintiff to proceed on only Counts I through VII. (ECF No. 35.)

7 **III. DISCUSSION**

8 This Court "may accept, reject, or modify, in whole or in part, the findings or
9 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party
10 timely objects to a magistrate judge's report and recommendation, then the court is
11 required to "make a *de novo* determination of those portions of the [report and
12 recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails
13 to object, however, the court is not required to conduct "any review at all . . . of any issue
14 that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985).
15 Indeed, the Ninth Circuit has recognized that a district court is not required to review a
16 magistrate judge's report and recommendation where no objections have been filed. See
17 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard
18 of review employed by the district court when reviewing a report and recommendation to
19 which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
20 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting
21 the view that district courts are not required to review "any issue that is not the subject of
22 an objection."). Thus, if there is no objection to a magistrate judge's recommendation,
23 then the court may accept the recommendation without review. See, e.g., *Johnstone*,
24 263 F. Supp. 2d at 1226 (accepting, without review, a magistrate judge's
25 recommendation to which no objection was filed).

26 In light of plaintiff's objections, the Court has engaged in a *de novo* review to
27 determine whether to adopt Magistrate Judge Cooke's recommendations. The
28 Magistrate Judge properly declined Defendants' request for the Court to screen Counts

1 VI and VII. The Magistrate Judge also properly found that Count VIII should be
2 dismissed because the claim is asserted against two defendants—Justice Court Judge
3 Karen R. Stephens and district attorney James Shirley—who are entitled to immunity from
4 suit and against a defendant—public defender Steven W. Cochran who represented
5 Plaintiff in his criminal case—who is not deemed a person acting under color of state law
6 under § 1983. (ECF No. 35 at 3-4.) The Court agrees with the Magistrate Judge and
7 overrules Plaintiff's Objection.

8 **IV. CONCLUSION**

9 It is therefore ordered, adjudged and decreed that the Report and
10 Recommendation of Magistrate Judge Valerie P. Cooke (ECF No. 35) is accepted and
11 adopted in its entirety.

12 It is further ordered that the Clerk file the second amended complaint (ECF Nos.
13 30, 30-1).

14 It is further ordered that Counts I, II, III, IV, V, VI and VII of the second amended
15 complaint will proceed.

16 It is further ordered that Count VIII is dismissed with prejudice.

17 DATED THIS 28th day of December 2017.

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20 MIRANDA M. DU
21 UNITED STATES DISTRICT JUDGE
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